No. 08-2457; No. 09-2615

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

THREE ANGELS BROADCASTING NETWORK, INC.,
an Illinois Non-Profit Corporation;
DANNY LEE SHELTON,

Plaintiffs-Appellees,

v.

GAILON ARTHUR JOY; ROBERT PICKLE,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Massachusetts
Case No. 07-40098

DEFENDANTS' REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTIONS FOR SANCTIONS AND TO AMEND DOCUMENTS

GAILON ARTHUR JOY, *PRO SE*
P.O. Box 37
Sterling, MA 01564
(508) 499-6292

ROBERT PICKLE, *PRO SE*
1354 County Highway 21
Halstad, MN 56548
(218) 456-2568

REPLY TO PLAINTIFFS' INTRODUCTION

Three Angels Broadcasting Network, Inc. ("3ABN") has never objected to Defendants obtaining 3ABN's financial information from copies of bank statements produced by MidCountry Bank ("MidCountry") ("MidCountry records"). Plaintiffs' response to the instant motions ("PR") confusingly refers to Plaintiffs collectively as 3ABN (PR p. 2), falsely and belatedly imputing the objections of Danny Lee Shelton ("Shelton") to 3ABN. (*infra* 3).

REPLY TO RELEVANT HISTORY

A. ***"... simultaneously appealing to this Court and filing a motion in the district court for an award of their litigation expenses."*** (PR p. 2)

The lower court invited Defendants to file a motion for costs. (Lower Court Docket Entry # ("Doc.") 141 p. 14). Plaintiffs' ongoing threats necessitated filing a notice of appeal. Applicable deadlines required more or less simultaneous filing.

B. ***"Appellants were ordered to file status reports every 60 days until the motion for reconsideration was decided."*** (PR p. 2)

The word "until" is not found in this Court's August 19, 2009, order.

C. **1SR *"also contained many assertions, accusations and arguments that were not of record ..."*** (PR p. 3)

Plaintiffs give no examples from Defendants' First Status report ("1SR"), and Defendants object to the taking of Plaintiffs' word for it.

D. **Defendants' Motions re: the Forwarding of Part of the Record (the MidCountry Records)** (PR p. 3)

Though Plaintiffs find it disconcerting, Defendants have the right to have

reviewed on appeal, *inter alia*, the effect of the withholding of the MidCountry record evidence from Defendants. Defendants "must do whatever else is necessary to enable the clerk to assemble and forward the record." Fed. R. App. P. 11(a). Therefore, Defendants' motions in the lower court are authorized by the rules.

E. The District Judge *"had granted the motion"* (PR p. 3)

Since Plaintiffs had requested that the MidCountry records be surrendered to them, and the district judge had instead ordered those records to be "returned to the party that produced those documents" (Doc. 141 p. 13), Plaintiffs never obtained the exact relief Plaintiffs requested, and Plaintiffs never objected to this fact.

F. Defendants *"did not seek a stay of the order to return the records"* (PR p. 4)

More importantly, Plaintiffs never appealed the order that the MidCountry records be returned to MidCountry rather than surrendered to Plaintiffs.

G. *"Appellants claimed they did not know that [the district judge's] order of October 2008 to return the MidCountry records to 3ABN had been executed more than a year before ...."* (PR p. 4)

Defendants believed that the ambiguous receipt and docket text meant that court staff had finally located the previously "lost" MidCountry records. (Doc. 212 p. 3; Doc. 206 pp. 2–4). This is confirmed by Defendants' May 20, 2009, filing which used Doc. 160 as evidence that the MidCountry records were lost "at the courthouse until about December 16, 2008." (Doc. 177 p. 5 n.4). The actual order, which required that the records be returned to MidCountry, was never executed.

H. ***"... turning them over to 3ABN – whose private information was contained in the records ..."*** (PR p. 4)

It is far too late for 3ABN to begin asserting a privacy interest over bank statements pertaining to its accounts when it never did so in more than two years.

I. ***"The parties and the district court understood perfectly that [the district judge] meant for the records to go to 3ABN ..."*** (PR p. 4)

Since Plaintiffs never appealed, Plaintiffs lack standing in Defendants' appeals to alter the October 30, 2008, order to mean what Plaintiffs believe the district judge meant to say rather that what he indisputably said. (Doc. 141 p. 13).

J. ***"At some point prior to January 15, 2010, the Appellants made a baseless charge of judicial misconduct against [the district judge] which caused him to recuse himself."*** (PR p. 5)

Since Plaintiffs do not know the date of service, the district judge must not have given Plaintiffs a copy of Defendants' complaint. Plaintiffs thus have no basis for calling it baseless. Recusal for baseless charges is not allowed. *In re American Ready Mix, Inc.*, 14 F.3d 1497, 1501 (10th Cir. 1994).

K. ***"3ABN opposed the motion on the basis that they were irrelevant to any pending issue ..."*** (PR p. 5)

Plaintiffs' difficulty is that Plaintiffs repeatedly make issues relevant by raising those issues in Plaintiffs' opposition briefs. In particular, Plaintiffs asserted: (a) Defendants' "contention that the [MidCountry] records contain anything unflattering is pure conjecture," (b) Defendants' Fed. R. Civ. P. 11 motion was "baseless." (c) "[T]he MidCountry records were never relevant." (Doc. 231 pp. 6–7,

1). In direct rebuttal, Defendants offered documents that (a) reveal unflattering financial transactions which the MidCountry records must contain, (b) establish that Plaintiffs violated Rule 11, and (c) prove that Plaintiffs habitually declare irrelevant what is indisputably relevant. (Doc. 233 pp. 5, 8; Doc. 242 pp. 8–9).

L. Defendants *"delivered an* ex parte *letter to the District Court"* (PR p. 6)

In reality, Defendants were merely replying to the clerk of court's letter, and Defendants naturally cc'ed the same three judges that the clerk had cc'ed. (Affidavit of Robert Pickle ¶ 1, Ex. A at p. 3; Doc. 244 p. 2).

M. *"Without waiting for permission to be granted, they filed the exhibits along with their motion."* (PR p. 6)

As Defendants have already pointed out to Plaintiffs, D. Mass. CM/ECF Admin. P. § O requires litigants to attach proposed documents to motions seeking leave to file. (Doc. 256 pp. 4–5; Doc. 258 pp. 1, 11; Doc. 257-1).

N. 3SR *"was clearly intended to prejudice this Court against 3ABN for reasons unrelated to the issues on appeal ..."* (PR p. 6)

Defendants' Third Status Report ("3SR") outlined Plaintiffs' three admissions, and the significance of those three admissions, which significance is indisputably related to the issues on appeal. (3SR pp. 1–2).

REPLY TO ARGUMENT

I. RE: DEFENDANTS' MOTION TO AMEND STATUS REPORTS

A. The Terms of the August 19, 2009, Order (PR p. 7)

Plaintiffs argue that the August 19 order's requirement to file status reports

ended on October 26, a conclusion that is far from clear. The order states:

> We hereby ... hold this appeal in abeyance pending the disposition of the motion for reconsideration by the district court. In the event that defendants are dissatisfied with the district court's ruling on their motion for reconsideration, they should file a new timely notice of appeal.
>
> Defendants shall file a status report every sixty days and promptly inform this court once the motion for reconsideration has been decided by the district court. Failure to file a status report may lead to dismissal of this appeal for lack of diligent prosecution.

The order does not explicitly state when the requirement to file status reports ends. Also, on December 12, 2009, Defendants moved to hold both of Defendants' appeals in abeyance until the MidCountry records were received by this Court. Since this perpetuated somewhat the situation that existed on August 19, Defendants in good faith believe that Defendants must still file status reports.

B. Defendants' Understanding of the August 19 Order (PR p. 8)

Defendants maintain that they have a duty to file status reports to keep this Court informed as to the status of matters below. But is that duty a court-ordered requirement? The answer to this question determines whether or not Defendants' appeals are dismissed if Defendants fail to timely file a status report. 1st Cir. R. 3.0(b). The first sentence of the Second Status Report ("2SR") and 3SR inserts into the record the idea that the penalty for failure no longer applies. But Defendants are without authority to determine that question, and Defendants' status reports of those dates should be amended unless this Court orders that status reports are not

required, despite Defendants' motion to hold Defendants' appeals in abeyance.

C. Whether 2SR Was Timely Filed (PR p. 8)

Plaintiffs ignore Defendants' November 2, and December 9 and 24, 2009, filings, which informed this Court as to the status of matters below. 2SR was filed but 43 days after December 24. That 3SR was filed exactly 60 days after 2SR (a fact Plaintiffs make no attempt to explain) clearly shows Defendants' intent to follow the August 19 order's guidelines as to the timing of status reports.

D. Whether Status Reports Are Required in Both Appeals (PR p. 8)

Defendants moved this Court to hold in abeyance both appeals. The duty to keep this Court informed about matters below therefore applies to both appeals.

E. Plaintiffs' Objection to Attaching Proposed Documents to Motions Seeking Leave to File (PR p. 9)

In a document that also responds to a motion for sanctions, Plaintiffs here use a frivolous legal argument, after Defendants already drew attention to the problem. (Doc. 256 pp. 4–5). The District of Minnesota may prohibit attaching proposed documents to motions for leave to file, but the First Circuit does not. 1st Cir. CM/ECF User's Guide pp. 20–21. Defendants' March 10, 2009, motion in this Court attached proposed corrections to that motion, and Plaintiffs never objected.

II. RE: DEFENDANTS' MOTION FOR SANCTIONS ("DM")

A. *"'Plaintiffs' stubborn refusal ... necessitating the filing of periodic status reports'"* (PR p. 9)

Plaintiffs' retort that Plaintiffs' conduct is "correct" (PR p. 9) does not negate

the facts: Plaintiffs' conduct caused the present impasse that makes status reports necessary. (DM pp. 7–8). Plaintiffs moved for sanctions against Defendants for filing status reports ("PM"), but Plaintiffs are the ones that caused the impasse.

B. ***"'Appellees had opposed those arguments ... (and prevailed in every respect).'"*** (PR p. 10)

The context of Plaintiffs' statement puts "prevailed in every respect" prior to Plaintiffs' considering a motion to strike 1SR, and 1SR was filed three weeks before October 26, 2009. (PM p. 3). Thus, the false impression was given that Plaintiffs had already "prevailed in every respect" prior to October 26.

C. ***"... Appellants implied in their second status report that [the district judge] recused himself because he was partial to 3ABN"*** (PR p. 10)

Defendants offered as a basis for sanctions Plaintiffs' false accusation that Defendants omitted context in order to imply this. (DM pp. 9–10). Plaintiffs cannot prove that Defendants either omitted context or implied this, and therefore resort to (a) reasserting their falsity and (b) distracting attention from Defendants' point by combining two points, and then dwelling at length on the other point.

D. ***"The only implication ... is that he felt his partiality might* henceforth *be questioned given that Appellants had baselessly accused him of judicial misconduct."*** (PR p. 11)

Plaintiffs fail to explain how Defendants' complaint is frivolous, which misrepresentation Defendants offered as a basis for sanctions (DM pp. 10–11), and here reassert the falsity by calling Defendants' complaint baseless. Since Plaintiffs

now call an "implication" what they previously asserted the recusal order "states" (PM p. 4), Plaintiffs tacitly concede that they misrepresented the recusal order.

E. Plaintiffs' Three Damaging Admissions

Plaintiffs fail to prove that Defendants took Plaintiffs' damaging admissions out of context, or that those admissions were not damaging admissions of any sort.

1. ***"'Filed' in the context of this sentence, however, simply means 'delivered to the courthouse.'"*** (PR p. 12)

Plaintiffs earlier argued that the MidCountry records "were not filed," but then admitted that they "were filed" after all. (Doc. 216 p. 11; Doc. 207 pp. 8–9; Doc. 231 p. 5). Plaintiffs' admission's context does not define "filed" to mean anything but "filed." (Doc. 231 p. 5). Thus, Defendants took nothing out of context.

2. ***"Appellants say that this sentence constitutes an admission by 3ABN that [the magistrate judge] should have recused himself before issuing his rulings."*** (PR p. 12)

Plaintiffs misstate Defendants' point, which was that Plaintiffs admitted that, in light of the misconduct investigations being conducted, it was not surprising that the magistrate judge recused himself. (Doc. 233 p. 2). Defendants then merely took that admission to its logical conclusion. (*Id.*). Plaintiffs now resort to accusing a federal magistrate judge of recusing himself simply because he found parties to be "exceedingly unpleasant." (PR p. 13). This accusation proves nothing, including that Defendants took anything out of context.

3. ***"As framed by 3ABN, this case has never involved Tommy Shelton, his alleged criminal conduct, or allegations that his***

alleged conduct was covered up." (PR p. 13)

If this were really true, one must wonder, Why were Defendants never sued over Defendants' most damaging reports, which allegedly caused great financial harm in 2006? (Doc. 80 p. 12; Doc. 10-5 p. 4). When the 3ABN Board apparently voted to sue in late January 2007, Save3ABN.com was mostly about the pedophilia allegations against Tommy Shelton ("Tommy"). (Doc. 81-10 pp. 23–24).

Gerald Duffy ("Duffy"), Shelton, and Tommy before the suit was filed, and the 3ABN Board chairman since, all indicated that the suit concerned Defendants' reporting about the pedophilia allegations. (Doc. 63-18; Doc. 171-26; Doc. 63-19 p. 2; Doc. 127-2). ¶ 46(a) of Plaintiffs' complaint quotes the leading paragraph of Save-3ABN.com's home page, which page explains that Shelton's cover up of the pedophilia allegations is why Save3ABN.com was created. (Doc. 1; Doc. 8-2 pp. 61–62). The pedophilia allegations also are (a) connected to ¶¶ 48(a), (c)–(d) of Plaintiffs' complaint, and (b) give Defendants a basis for showing that Shelton did not divorce Linda Shelton for adultery (an issue found under ¶ 50 of Plaintiffs' complaint), since Shelton has no scruples about covering up pedophilia allegations.

Plaintiffs' February 18, 2010, admission as to what framed the original basis of the lawsuit gives one specific (Defendants' reports about the pedophilia allegations against Tommy) and two generalities (Defendants' reports about "financial mismanagement" and "other misconduct"). (Doc. 231 p. 5). Plaintiffs now pretend that the admission fails to identify any specific reports that framed the

original basis for the case. Yet the complete, unedited sentence clearly indicates otherwise, confirming what Duffy, Shelton, Tommy, the 3ABN Board chairman, Larry Ewing, and Plaintiffs' complaint previously indicated, that Defendants were sued for blowing the whistle on Shelton's cover up of the pedophilia allegations against Tommy. Plaintiffs are henceforth estopped from denying the obvious.

F. Defendants' Use of *"www.3abnvjoy.com"* (PR p. 14)

Plaintiffs inconsistently expand the record here to refer to a domain name not mentioned in the lower court record. In doing so, Plaintiffs tacitly admit the folly of dismissing their lawsuit without obtaining a permanent injunction against Defendants' use of domain names containing the characters "3ABN."

CONCLUSION

Plaintiffs' response is unconvincing and at times problematic. Therefore, Defendants' motions for sanctions and to amend status reports should be granted.

Respectfully submitted,

Dated: May 5, 2010

s/ Gailon Arthur Joy, *pro se*
Gailon Arthur Joy, *pro se*
P.O. Box 37
Sterling, MA 01564
Tel: (508) 499-6292

and

s/ Robert Pickle, *pro se*
Robert Pickle, *pro se*
1354 County Highway 21
Halstad, MN 56548
Tel: (218) 456-2568

CERTIFICATE OF SERVICE

I, Bob Pickle, hereby certify that by May 5, 2010, I served copies of this response with accompanying affidavit and proposed documents on the following registered parties via the ECF system:

John P. Pucci, J. Lizette Richards
Attorneys for Danny Lee Shelton
and Three Angels Broadcasting Network, Inc.

M. Gregory Simpson
Attorney for Danny Lee Shelton
and Three Angels Broadcasting Network, Inc.

And on the following parties by way of First Class U.S. Mail:

Gerald Duffy, Kristin L. Kingsbury,
Jerrie Hayes, William Christopher Penwell
Attorneys for Danny Lee Shelton
and Three Angels Broadcasting Network, Inc.
Siegel, Brill, Greupner, Duffy & Foster, P.A.
100 Washington Avenue South, Suite 1300
Minneapolis, MN 55401

Dated: May 5, 2010

s/ Bob Pickle
Bob Pickle